

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

Connect America Fund)	WC Docket No. 10-90
)	
A National Broadband Plan for Our Future)	GN Docket No. 09-51
)	
Establishing Just and Reasonable Rates for)	WC Docket No. 07-135
Local Exchange Carriers)	
)	
High-Cost Universal Service Support)	WC Docket No. 05-337
)	
Developing an Unified Intercarrier)	CC Docket No. 01-92
Compensation Regime)	
)	
Federal-State Joint Board on Universal)	CC Docket No. 96-45
Service)	
)	
Lifeline and Link-Up)	WC Docket No. 03-109

**REPLY COMMENTS OF FREE CONFERENCING CORPORATION RELATED TO
FURTHER INQUIRY INTO CERTAIN ISSUES IN THE UNIVERSAL SERVICE—
INTERCARRIER COMPENSATION TRANSFORMATION PROCEEDING**

September 6, 2011

Table of Contents

Summary	iii
1. Introduction	1
2. Natural Consensus has Taken Shape Among Disparate Stakeholders	3
A. Opposition to Preemption of State Jurisdiction	5
B. Incorporation of VoIP in Access Charge Infrastructure	6
C. Opposition to Artificial \$.0007 Rate/Support for Cost-Based Rates	8
3. Subsidy Shifts in USTA Proposal	10
4. Conclusion	13

Summary

- The USTA proposal is a “negotiated consensus” in which the 6 largest carriers and 3 rural carrier associations traded off and locked in various funding streams.
- By contrast, an organic consensus has taken shape in which public and private, urban and rural stakeholders independently arrived at good public policy in relation to Intercarrier Compensation (ICC).
- The fundamental task in this Rulemaking is to maintain just and reasonable rates for ICC and overall benefits for consumers: either lower prices for voice usage or universal access to an improved telecommunications system.
- FreeConferenceCall.com believes that the framework laid out by the State Members of the Universal Joint Service Board is better structured to move these dual policy goals forward than the corporate wishlist that is the USTA proposal.
- The organic consensus relates to three components of ICC transformation: support for dual state-federal jurisdiction; support for inclusion of Voice over Internet Protocol (VoIP) in the access charge system; and opposition to the \$.0007 and/or support for cost-based access rates.
- With these changes, the Commission will reduce access charges, stabilize resources for maintenance or deployment of broadband, and respect the statutory federal-state balance in telecommunications—all on solid legal footing.
- If one of the goals of ICC transformation is to reduce or eliminate subsidies, the USTA plan works against this goal.
- The USTA proposal allows AT&T and Verizon to keep more of the ratepayers’ payment, and replaces it with new subsidies (Subscriber Line Charge increases and the \$300 million Access Recovery Mechanism) to backfill the losses incurred by ILECs and RLECs of their previous ICC subsidies.
- This shift of the consumers’ payment for long distance (again, if the consumer is not paying for origination, transport and termination, what is he or she paying for?) to AT&T/Verizon leads to new charges for the consumer—the exact opposite of one of the policy goals that should drive this Rulemaking.
- In this Rulemaking process, FreeConferenceCall.com has sought solutions that will cause us some harm but allow us to continue to serve our 15 to 20 million customers each month.

Free Conferencing Corporation ("FreeConferenceCall.com") hereby replies to various comments filed in the Further Inquiry by the Commission related to the *Notice of Proposed Rulemaking (NPRM)* soliciting comment on draft rules developed by the Commission and the subsequent proposals by US Telecom (USTA) and that of the State Members of the Federal-State Universal Service Joint Board (State Members).¹

*"For every complex problem, there is a solution that is clear, simple—and wrong."
H.L. Mencken*

1. Introduction

FreeConferenceCall.com has previously filed comments and reply comments focused on the issue of rural tariffs and access stimulation.² In our more recent comments, FreeConferenceCall.com addressed the Commission's further inquiry into related issues.³ In presenting reply comments to the further inquiry,

¹ *Connect America Fund, A National Broadband Plan for Our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers, High-Cost Universal Service Support, Developing a Unified Intercarrier Compensation System, et al*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Dockets No. 01-92, 96-45, FCC 11-13, *Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking* (rel. 2/8/11) (the "NPRM").

² FreeConferenceCall.com Comments and Reply Comments to NPRM (4/1/11; 4/18/11)

³ Comments of Free Conferencing Corporation in Response to Further Inquiry into Certain Issues in the Universal Service—Intercarrier Compensation Transformation Proceeding (8/24/11)

FreeConferenceCall.com focuses on proposals for Intercarrier Compensation Charge (ICC) transformation.

We reiterate that the fundamental task in this Rulemaking is to maintain just and reasonable rates for ICC and overall benefits for consumers: either lower prices for voice usage or universal access to an improved telecommunications system. The problem is that the Commission cannot mandate the former and must rely on significant changes to the Universal Service Fund (USF) to try to achieve the latter. FreeConferenceCall.com believes that the framework laid out by the State Members of the Universal Joint Service Board⁴ is better structured to move these dual policy goals forward than the corporate wishlist that is the USTA proposal.⁵

The Commission has expressed a preference for a consensus. However, as a California company, we are very well aware of the repercussions of a “negotiated consensus” among industry interests in a regulated environment—the electricity market meltdown in 2001 was the direct result of a “negotiated consensus” and California’s consumers are still paying for that historic man-made disaster. The re-regulation was a top-down solution where stakeholders were each given concessions in return for their support—subsequent rampant gaming of electricity production collapsed the wholesale market and led to brownouts. Another similarity with the electricity debacle is the lack of publicly available models and analysis, NARUC points out that “there will not be enough time for anyone, including

⁴ State Members of Universal Service Joint Board Comments on NPRM (5/2/11)

⁵ “America’s Broadband Connectivity Plan (ABC)”, Submitted to the FCC by AT&T, Verizon, FairPoint Communications, CenturyLink, Frontier, and Windstream (7/29/11)

the FCC's own experts, to conduct an adequate analysis of the model – given the anticipated effort to get an order ready by the October 2011 Agenda meeting.”⁶

There is an alternative, an organic consensus that was not the result of horse-trading or arm-twisting or other manipulations. In looking over various comments to the further inquiry, it is clear that a number of stakeholders in the public and private sector fundamentally agree on three issues related to ICC transformation: support for dual state-federal jurisdiction; support for inclusion of Voice over Internet Protocol (VoIP) in the access charge system; and opposition to the \$.0007 and/or support for cost-based access rates.

While the Commission seeks to reduce or eliminate subsidies (particularly “implicit” subsidies) in this proceeding, FreeConferenceCall.com is also concerned that the USTA proposal merely shifts subsidies in ways that distort the market and will cause significant harm to both telecommunications competition and consumers.

2. Natural Consensus has Taken Shape Among Disparate Stakeholders

It is apparent that the USTA proposal, which was put together by the two largest nationwide carriers in conjunction with the largest rural ILECs was created by trading off and locking in various funding streams to their collective benefit.

Once the 6 companies arrived at their agreement, three rural carrier associations were brought in to negotiate. After receiving concessions in the form of a Subscriber Line Charge (SLC) greater than the ILECs, a 10% rate of return (greater than the 8.5% rate in the State Member's proposal), and a \$300 million annual

⁶ NARUC, Further Inquiry Comments, 8/23/11 (p. 9)

Access Recovery Mechanism, the three rural associations signed off on a parallel proposal to that of USTA. To any observer, this is not “negotiated consensus” but backscratching with consumers’ money. Even with this deal, the parties have some differences as to what will and will not be permitted showing that, “(t)his far-from-unified view of what the statute allows only points out the obvious: the financial incentives for industry to join a “consensus deal” may change, but the facts, precedent, and dictates of the statute do not.”⁷

In the course of this proceeding, various parties’ comments (that were not negotiated) express a similarity on major questions related to ICC transformation. From the State Members (representing state regulators) to NARUC (representing 50 states) to Comptel (representing over one hundred competitive telecommunications providers) to the Rural Broadband Alliance (representing over 60 rural carriers) to RICA (representing rural competitive telecommunications providers) to NASUCA (representing consumer advocates in over 40 states) to a handful of others representing public and private sector interests form an organic consensus that should inform the Commission’s Rulemaking. The Commission needs to fix what is broken in the ICC system through the good policymaking of the organic consensus. In doing so, the Commission will reduce access charges, stabilize resources for maintenance or deployment of broadband, and respect the statutory federal-state balance in telecommunications—all on solid legal footing.

⁷ NARUC, Further Inquiry Comments, 8/23/11 (p. 11)

2.A. Opposition to Preemption of State Jurisdiction

The most common substantive and legal issue raised against the USTA proposal is the illegality of the Commission preempting the states' jurisdiction in ICC issues. The plan "is in direct contravention of a White House memorandum directing federal agencies to avoid preemptive rules except when explicitly intended by Congress.⁸ The preemptive components of the ABC Plan are also in direct contravention of the Communications Act of 1934 and the Telecommunications Act of 1996, which remains the law and provides for a substantial state role in the governance of telephone services."⁹

The Iowa Utilities Board (IUB) expresses their view succinctly, Generally, the Board opposes all aspects of the ABC Plan's recommendations that the Commission preempt the states from exercising their authority over intrastate telecommunications services.¹⁰

Private sector stakeholders agree with this view. Comptel states, "The federal statute – which the Commission cannot preempt or violate – gave states a role under the (Section) 251/252 statutory regime."¹¹ Similarly, RICA "has cautioned against precipitous actions that are contrary to the Act, including preemption of state regulation of intrastate services. For statutory and purely pragmatic purposes, state regulatory authorities remain uniquely positioned to consider purely local issues."¹² Finally, the RBA acknowledges the states' role, "In accordance with established statute, rules, and policy, the Commission should determine (in conjunction with the

⁸See <http://www.whitehouse.gov/the-press-office/presidential-memorandum-regarding-preemption>.

⁹ NASUCA, Further Inquiry Comments, 8/24/11 (p. 7)

¹⁰ Iowa Utilities Board, Further Inquiry Comments, 8/24/11 (p. 3)

¹¹ Comptel, Further Inquiry Comments, 8/24/11 (p.11)

¹² RICA, Further Inquiry Comments, 8/24/11 (p. 23)

Joint Board, if intrastate service is involved) what portion of a rural rate-of-return carrier's costs should be reassigned from recovery through access charges to recovery from USF.”¹³

The recognition of state jurisdiction includes basic regulatory duties, as FreeConferenceCall.com stated in our previous comments and is reflected by the Communications Workers of America, “the Commission should not adopt any provision that would eliminate state Commissions’ ability to require incumbent carriers to meet carrier-of-last-resort obligations.”¹⁴

2.B. Incorporation of VoIP in Access Charge Infrastructure

Of the three voice platforms, VoIP has been along for a free ride. These services advertise themselves as “phone services” to attract customers yet refuse to play on a level playing field with wireline and wireless carrier obligations. For example, net neutrality champion Google states “Google (Voice) has the right to restrict calls or connections to any telephone numbers in its sole discretion.”¹⁵ Similarly, Vonage does not include the following in its commercials, “Our service is not a telecommunications service...This treatment may limit or otherwise affect your rights of redress before regulatory agencies.”¹⁶ The solution is clear to numerous public and private sector stakeholders such as RICA, “(i)nterconnected

¹³ RBA, Further Inquiry Comments, 8/22/11 (p. 32)

¹⁴ Communications Workers of America, Further Inquiry Comments, 8/24/11 (p. 3)

¹⁵ Google voice Legal Notices under “Google’s Proprietary Rights”.

¹⁶ Vonage Terms of Service, “5.1 Service Distinctions”.

VoIP traffic should not be treated differently from any other access traffic that utilizes the facilities of a carrier for the termination of a call.”¹⁷

The IUB takes a clear stand shared by others, “the Board opposes any recommendation in the ABC Plan that would prevent Voice over Internet Protocol (VoIP) traffic from being classified as a telecommunications service.”¹⁸ The State Members proposal expands the contribution base by requiring all participants in the network to pay for it. RBA frames the issue:

...the public interest will also be well served if the Commission follows the process established by the NPRM and first clarifies that access charges apply to VoIP services. The failure of the Commission to act on this issue in accordance with the Act and existing rules and regulations has artificially suppressed the demand units to which access is applicable. This results in higher rates for those carriers that pay for the access services they utilize, while providers of service labeled VoIP inequitably avoid paying for switched access to complete calls on another carrier’s network.

By acting first on the VoIP issue, the Commission will ensure that the framework for reform properly identifies the existing demand units and resulting access charge rate levels. If the Commission had long ago resolved this issue, the demand units of VoIP providers would have been included in the demand projections utilized to establish rates, and the access rates for rural rate-of-return carriers would likely be at a much lower level. Once the Commission acts on VoIP and rates are adjusted to reflect the additional demand units, the Commission can then determine the extent to which there is a factual basis to warrant further rate reductions by transferring cost recovery for rate-of-return carriers from the provision of access services to additional recovery from the USF.¹⁹

One of the premises of this transformation process is that wireline call volumes, and the resulting access revenues are dropping steadily and need to be replaced with other mechanisms. While it is clear that there has been a decline in call volumes in the last 5 to 10 years (the timeframe that is usually cited), and that wireless and VoIP call volumes are growing, it is instructive to take that time frame

¹⁷ RICA, Further Inquiry Comments, 8/24/11 (p. 25)

¹⁸ Iowa Utilities Board, Further Inquiry Comments, 8/24/11 (p. 3)

¹⁹ RBA, Further Inquiry Comments, 8/22/11 (p. 32)

back further. With the perspective of two decades, we see the call volumes of over 504 billion (InterLATA Billed Access Minutes) in 2007 are similar to mid-1990's levels (500 billion in 1994).²⁰

The increase and subsequent decline in the intervening years corresponds with the lifecycle of dial-up Internet and the substitution of broadband. It may well be that there will be a more stable (although lower) wireline minute usage now that the dial-up bubble has past. If call volumes flatten somewhat going forward, then “(t)o the extent that VoIP traffic is included and phantom traffic is reduced, this will not only increase MOUs, it will offset reductions in revenue.”²¹

FreeConferenceCall.com strongly supports technology advances in telecommunications—we have made great strides in high definition voice applications—but we should give pause to any hasty policy shifts that advantage one voice platform over another.

2.C. Opposition to Artificial \$.0007/Support for Cost-Based Access Rates

Comments related to the USTA-proposed reduction of terminating access to \$.0007 take two tacks: opposition to this proposed rate as inadequate and illegal, and/or support for a cost-based access rate that would be just and reasonable. It is important to note that reductions of access charges down to the RBOC range (roughly \$.0035-\$.007) would produce significant savings in access charges throughout the country while lessening the burden on USF/CAF or other supports. With the USTA proposal for significant increases in SLC for the consumer, it is

²⁰ *Trends in Telephone Service: Status as of September, 2010* (FCC Report, p. 10-4)

²¹ NASUCA, Further Inquiry Comments, 8/24/11 (p. 107)

important to remember that the most current contribution level for federal universal service is 14.4%, so any easing will be welcome.

Pushing carriers to a near zero rate (\$.0007) that is not just and reasonable will distort the marketplace, “(t)he “near zero” rates advocated by Hausman will provide incentives for market participants to take actions which may not be desirable. Requiring a cost-based level of terminating compensation will deter other carriers from “dumping” potentially large amounts of traffic onto ILEC networks. The increase of traffic on the receiving/terminating carrier’s network generated by the uneconomically low rate advocated by Professor Hausman could also cause congestion and negatively impact the quality of the services provided by the terminating carrier to its customers.”²² Comptel adds that “Contrary to the claim in the White Paper, setting a cap – particularly a cap *below* the cost-based rates defined by the Commission’s own rules - is not the same as establishing a methodology...State commissions that have conducted cost proceedings have argued that the terminating rate of \$0.0007, proposed by the ABC Plan, has no basis in cost and is in fact not a cost-based rate.”²³

There is clearly concern that with any transition to a new rate structure, “(t)he stability of these companies will be threatened if the FCC provides a windfall to long distance companies in the form or(sic) reduced access charges without ensuring that these rural carriers are provided with revenue cost recovery to offset the losses resulting from reduced rates.”²⁴ It must be said that the windfall has been estimated

²² NASUCA, Further Inquiry Comments, 8/24/11 (p. 17)

²³ Comptel, Further Inquiry Comments, 8/24/11 (p. 13)

²⁴ RBA, Further Inquiry Comments, 8/22/11 (p. 18)

up to \$6 billion. At the same time, “RICA maintains, as stated in prior filings, that the Act does not permit the consolidation of all terminating access under the reciprocal compensation rules mechanism, but rural CLECs are apparently intended to just shrivel up and die. There is no consideration for the necessary recovery of expenses rural CLECs have incurred to provide service in reliance on the Commission’s explicit policy with respect to rural CLEC access charges.”²⁵

We at FreeConferenceCall.com have expressed our view that terminating access must be sufficient to cover the cost of service, which the \$.0007 clearly does not.

3. Subsidy Shifts in USTA Proposal

The Commission has expressed in various settings that it seeks to end implicit subsidies in telephony. It is important to stress that only rates above cost are subsidies—not all current access rates are high enough to be subsidies. There is a legitimate place for compensation (cost plus reasonable profit) in any marketplace, even a regulated market.

In meeting the FCC’s goal, the math for the USTA proposal does not add up to the elimination of subsidies—merely a shift of those subsidies to the largest carriers. “The charges that long distance companies owned by AT&T and Verizon pay to local phone companies for completing calls would decrease to levels that **do not even cover the direct cost of the access service (not to mention contributing to joint and common costs)**, and the difference would be made up

²⁵ RICA, Further Inquiry Comments, 8/24/11 (p. 9)

through subscriber line charge (“SLC”) increases, which customers could not avoid. This would create an improper cross-subsidy in violation of § 254(k) of the Act, and would harm universal service by making telephone service less affordable, contrary to § 254(b).²⁶

If both AT&T and Verizon have net outbound call traffic after reciprocal traffic with each other (due to their 80% combined share of the landlines in the United States), then the rest of the carriers combined must have net inbound call traffic to balance out call volumes in the telecommunications system. All other carriers therefore receive more terminating access than they pay out (in the aggregate).

Vz outbound minutes

ATT outbound minutes

Total outbound minutes (to be terminated with all other carriers)

In the USTA proposal, the overall subsidy is made up of the actual cost of termination above \$.0007 and gives these funds to AT&T and Verizon (allowing them to avoid paying a portion of terminating access charges while keeping the customers’ payments).

Vz average terminating rate minus \$.0007	=	\$ avoided cost for Vz
<u>ATT average terminating rate minus \$.0007</u>	=	<u>\$ avoided cost for ATT</u>
Total terminating access rate gain	=	total profit increase

²⁶ NASUCA, Further Inquiry Comments, 8/24/11 (p. 6)

The difference in AT&T/Verizon's net out bound call traffic multiplied by the difference in today's terminating access rates and the proposed \$.0007 is roughly equal to the "subsidy" shift from rural America to AT&T and Verizon.

Vz outbound minutes	X	avoided cost for Vz	=	\$ subsidy shift
ATT outbound minutes	X	avoided cost for ATT	=	\$ subsidy shift
Total outbound minutes	X	Total rate gain	=	\$ subsidy shift

If one of the goals of ICC transformation is to reduce or eliminate subsidies, the USTA plan works against this goal. The USTA proposal allows AT&T and Verizon to keep more of the ratepayers' payment, and replaces it with new subsidies (Subscriber Line Charge increases and the \$300 million Access Recovery Mechanism) to backfill the losses incurred by ILECs and RLECs of their previous ICC subsidies—most of which are actually cost-based.

This shift of the consumers' payment for long distance (again, if the consumer is not paying for origination, transport and termination, what is he or she paying for?) to AT&T/Verizon leads to new charges for the consumer—the exact opposite of one of the policy goals that should drive this Rulemaking. Moreover, within the consumer base, it would trigger a "...fundamental shift in cost/benefit from the customers who use long- distance service (and the companies that provide the service) to those who do not."²⁷

²⁷ NASUCA, Further Inquiry Comments, 8/24/11 (p. 11)

4. Conclusion

A significant portion of the headroom created between existing rates and the lower tariffs envisioned throughout the market must produce one of two results—a lower price for the consumer or universal access to quality broadband. The USTA proposal does neither, and in return insists their “negotiated consensus” is a take it or leave it deal. Any experienced negotiator would tell the Commission to avoid such hard sell tactics.

The State Members’ proposal is the right framework to yield this result—and as shown above, there are significant stakeholders who agree on some core reforms of ICC. Avoiding preemption of state jurisdiction to arrive at just and reasonable solutions, inclusion of VoIP in any ICC structures, and anchoring terminating access rates in a cost-based structure are all strong footings for the additional reforms proposed for USF. Avoiding additional cost burdens for consumers to pay for what they already have is another vital outcome of reform.

In this Rulemaking process, FreeConferenceCall.com has engaged in a positive manner, seeking solutions that will cause us some harm but allow us to continue to serve our 15 to 20 million customers each month. We seek certainty and believe the Commission is well positioned to provide some stability in the telecommunications marketplace if it heeds the advice of the organic consensus.